

## **Part 3**

### **Commonsense Consumption Act**

#### **78B-4-301 Title.**

This part is known as the "Commonsense Consumption Act."

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78B-4-302 Definitions.**

As used in this part:

- (1) "Claim" means any assertion by or on behalf of a natural person, as well as any derivative claim arising from it, and asserted by or on behalf of any other person.
- (2) "Food":
  - (a) means any raw, cooked, or processed edible substance, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption;
  - (b) does not include:
    - (i) tobacco products;
    - (ii) alcohol products;
    - (iii) vitamins or dietary supplements;
    - (iv) illegal drugs; or
    - (v) prescription or over-the-counter drugs.
- (3) "Knowing and willful violation" means that the conduct constituting the violation was:
  - (a) committed with the intent to deceive or injure consumers or with actual knowledge that the conduct was injurious to consumers; and
  - (b) not required by regulation, order, rule, ordinance, or any statute administered by a federal, state, or local government agency.
- (4) "Condition resulting from long term consumption of food" means the cumulative effect of consumption of food, which includes weight gain, obesity, or other generally known health conditions allegedly caused by or likely to result from the consumption of food.

Renumbered and Amended by Chapter 3, 2008 General Session

#### **78B-4-303 Prevention of unfounded lawsuits -- Exemption.**

- (1) Except as provided in Subsection (2), a manufacturer, packer, distributor, carrier, holder, seller, marketer, advertiser of a food, or an association of one or more such entities, may not be subject to civil liability arising under any state statute, rule, public policy, court or administrative decision, municipal ordinance, or other action having the effect of law, for any claim of obesity or weight gain resulting from the consumption of food.
- (2) Subsection (1) may not apply where the claim of obesity or weight gain is based on:
  - (a) a material violation of an adulteration or misbranding requirement prescribed by state or federal statute, rule, regulation, or ordinance and the claimed injury was proximately caused by the violation; or
  - (b) any other material violation of federal or state law applicable to the manufacturing, marketing, distribution, advertising, labeling, or sale of food, provided that the violation is knowing and willful, and the claimed injury was proximately caused by the violation.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-4-304 Pleading requirements.**

- (1) In any action commenced under the provisions of Subsection 78B-4-303(2), the complaint or petition shall state with particularity the following:
  - (a) the statute, rule, regulation, ordinance, or other law that was allegedly violated;
  - (b) the facts that are alleged to constitute a material violation of the statute, rule, regulation, ordinance, or other law; and
  - (c) the facts alleged to demonstrate that the violation proximately caused actual injury to the plaintiff.
- (2) The complaint or petition shall also state with particularity facts sufficient to support a reasonable inference that the violation was with intent to deceive or injure consumers or with the actual knowledge that the violation was injurious to consumers.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-4-305 Stay pending motion to dismiss.**

- (1) In any action commenced under the provisions of Subsection 78B-4-303(2), all discovery and other proceedings shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to a party.
- (2) During the pendency of any stay of discovery pursuant to this section, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, and tangible objects that are in the custody or control of the party and are relevant to the allegations, as if they were the subject of a continuing request for production from an opposing party under Rule 34, URCP.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-4-306 Applicability.**

The provisions of this chapter apply to all covered claims pending on May 3, 2004, and all claims filed after that date, regardless of when the claim arose.

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